

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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JESSE N. SCHROEDER, D.D.S., *individually  
and as Plan Administrator of the Mid Atlantic  
Associates of Medical Professional Voluntary  
Employees' Beneficiary Association Plan-  
Jesse N. Schroeder, D.D.S.*,

Plaintiff,

v.

NORTH FORK BANK,

Defendant.

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**ORDER**  
07-CV-394-A

The above-referenced case was referred to Magistrate Judge H. Kenneth Schroeder, Jr., pursuant to 28 U.S.C. § 636(b)(1) for the conduct of pretrial proceedings. On February 14, 2014, Magistrate Judge Schroeder filed a Report and Recommendation, Dkt. No. 60, recommending that the plaintiff's motion for summary judgment as to liability under the first cause of action alleging breach of contract, Dkt. No. 44, be granted, and that defendant's motion for summary judgment, Dkt. No. 45, dismissing plaintiff's breach of contract, breach of fiduciary duty and negligence claims be denied.

The Court has carefully reviewed the Report and Recommendation, the record in this case, the pleadings and materials submitted by the parties, including defendant's objections, and, having heard after oral argument March 27, 2014, it is hereby

**ORDERED**, that pursuant to 28 U.S.C. § 636(b)(1), upon *de novo* review, and for the reasons set forth in Magistrate Judge Schroeder's Report and Recommendation, the plaintiff's motion for partial summary judgment as to liability on the first cause of

action is granted, and the defendant's motion for summary judgment dismissing plaintiff's breach of contract, breach of fiduciary duty and negligence claims is denied.

On or before April 2, 2014, the parties are directed to file very short status reports regarding the issue of damages for the breach of contract and whether the Court should consider an Order pursuant to Fed. R. Civ. P. 56(f)(3) for consideration of summary judgment, or partial summary judgment, on the damages for the breach of contract. The parties shall appear April 4, 2014 at 9:00 a.m. for a status conference.

**IT IS SO ORDERED.**

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*Richard J. Arcara*  
HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT COURT

Dated: March 28, 2014